

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

MITCHELL LAVERN LUDY,)
)
Plaintiff,)
)
v.) **CIVIL ACTION NO. 5:13-CV-353 (MTT)**
)
CYNTHIA NELSON, et al.,)
)
Defendants.)
)

ORDER

This matter is before the Court on the Recommendation of United States Magistrate Judge Stephen Hyles. (Doc. 24). After reviewing the Defendants' motion to dismiss (Doc. 18), the Magistrate Judge recommends granting the motion because the Plaintiff has abused the judicial process by failing to disclose prior lawsuits on his Section 1983 complaint form. The Magistrate Judge also recommends denying the Plaintiff's motions to amend his complaint (Docs. 10, 11) and his motion for injunctive relief (Doc. 14) as moot. The Plaintiff did not file an objection to the Recommendation but, instead, filed a motion for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A), claiming his "complaint was done in such haste that [he] committed to[o] many inadvertent errors." (Doc. 25 at 1).

The Plaintiff contends he has an "unqualified right" to voluntarily dismiss his case without prejudice prior to the filing of the Defendants' answer. (Doc. 25 at 2). The Prison Litigation Reform Act ("PLRA"), however, "does not permit this type of

gamesmanship." *Stone v. Smith*, 2009 WL 368620, at *1(S.D. Ga.). Rule 41(a) is trumped by the PLRA's screening and three-strikes provisions, and the Plaintiff may not voluntarily dismiss his case to circumvent the three-strikes provision once it has been recommended that his case be involuntarily dismissed for abuse of the judicial process. See *id.* at *1-2.

The Court has reviewed the Recommendation, and the Recommendation is adopted and made the order of this Court. The Defendants' motion to dismiss is **GRANTED**. The Plaintiff's motions to amend and for injunctive relief (Docs. 10, 11, 14) are **DENIED as moot**. The Plaintiff's motion to voluntarily dismiss (Doc. 25) is **DENIED**. The Court determines that its decision in this case is a strike for purposes of 28 U.S.C. § 1915(g), the so-called "three strikes provision" of the PLRA. See *Rivera v. Allin*, 144 F.3d 719, 731 (11th Cir. 1998), *abrogated on other grounds by Jones v. Bock*, 549 U.S. 199 (2007) ("[D]ismissal for abuse of the judicial process is precisely the type of strike that Congress envisioned when drafting section 1915(g).").

SO ORDERED, this the 5th day of February, 2014.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT